

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Devon W. BROWN,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	1:16-cv-00008-CAP
)	
the CITY OF ATLANTA, Georgia, et)	
al.,)	
)	
Defendants.)	

PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO DISMISS

COMES NOW Plaintiff Devon W. Brown (“Plaintiff” or “Brown”) and files this *Response to Defendant’s Motion to Dismiss*, as follows.

Pursuant to Federal Rule of Civil Procedure Rule 15(a)(1)(B), within 21 days of the filing of Defendant’s Motion to Dismiss [Doc. 6], Plaintiff timely filed an *Amended Complaint* [Doc. 7], which clarified a number of factual issues and will obviate a number of arguments raised by Defendant’s Motion. For example, the *Amended Complaint* further clarifies that punitive damages are sought only against the individual Defendants, and not the City of Atlanta; clarifies that the state law claims are brought only against the individual defendants; makes even more clear Plaintiff’s allegation that he was not engaged in any unlawful or

illegal conduct on the evening of his arrest, nor was he engaged in any activity that required licensure; and it further clarifies Plaintiff's allegation that no member of his clubhouse permitted officers to enter the premises on the evening of his arrest. The goal of the Amended Complaint is to preserve judicial resources by preventing the litigation of a Motion that can be easily resolved by factual clarification and an adjustment to the specific relief sought.

Plaintiff's amended complaint supersedes the original complaint. *See Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1345 n. 1 (11th Cir.1999) ("An amended complaint supersedes an original complaint."); *Varnes v. Local 91, Glass Bottle Blowers Ass'n*, 614 F.2d 1365, 1370 n. 6 (11th Cir.1982) ("As a general rule, an amended complaint supersedes and replaces the original complaint unless the amendment specifically refers to or adopts the earlier pleading.") Further, the amended complaint renders moot the motion to dismiss the original complaint because the motion seeks to dismiss a pleading that has been superseded. *See Renal Treatment Ctrs.-Mid-Atlantic, Inc. v. Franklin Chevrolet-Cadillac-Pontiac-GMC*, No. 608CV87, 2009 WL 995564, at *1 (S.D.Ga. Apr.13, 2009) (noting that a pleading superseded by an amended complaint was "entirely irrelevant," and therefore concluding that the motion to dismiss the original pleading was moot); *Gulf Coast Recycling, Inc. v. Johnson Controls, Inc.*, No. 8:07-CV-2143-T-30TBM, 2008 WL 434880, at *1 (M.D.Fla. Feb.14, 2008)

(concluding that the motion to dismiss was moot following the filing of the amended complaint because “[a]n amended complaint completely supersedes the original complaint, and once a complaint is amended, the only issues before the Court are the ones raised in the text of the amended complaint”); *Mizzaro v. Home Depot, Inc.*, No. Civ. A. 1:06-CV-11510, 2007 WL 2254693, at *3 (N.D.Ga. July 18, 2007) (Evans, J.) (dismissing as moot a motion to dismiss addressing the original complaint following defendants' acceding to the filing of an amended complaint). *See also* *Geathers v. Bank of Am., N.A.*, No. 1:14-CV-00850, 2015 WL 348852, at *2 (N.D. Ga. Jan. 26, 2015) (dismissing motion to dismiss as moot in light of amended complaint).

For these reasons, Plaintiff respectfully requests that this Court DENY AS MOOT the Motion.

In the alternative, in the event the Court decides the Motion is not moot, Plaintiff requests that he be permitted additional time to respond to the Motion, to correspond with the time required to respond to any Motion filed regarding the *Amended Complaint*. Plaintiff submits that such an extension will not prejudice any party, would prevent the waste and duplication of effort, and would further the interest of judicial economy.

This March 2, 2016.

/s/ James Radford

James Radford
Georgia Bar No. 108007
james@decaturlegal.com

RADFORD & KEEBAUGH, LLC
315 W. Ponce de Leon Ave.
Suite 1080
Decatur, Georgia 30030
(678) 271-0300

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing pleading using the CM/ECF system, which should send a notification of such filing to all counsel of record.

/s/ James Radford
JAMES RADFORD
Georgia Bar No. 108007